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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,315	08/31/2001	Martin W. Masters	2001P16281US	2177

7590

01/02/2004

Siemens Corporation
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT

PAPER NUMBER

2643

DATE MAILED: 01/02/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,315

Applicant(s)

MASTERS ET AL

Examiner

Phylesha L Dabney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This action is in response to the amendment received on 17 October 2003 in which claims 1-19 are pending.

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 30 June 2003 was filed after the mailing date of the first office action on 17 July 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 5-6, 8-9, 11-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Widmer et al (U.S. Patent No. 6,401,859).

Regarding claims 1 and 13, Widmer teaches a textured hearing instrument shell (figs. 4-24).

Regarding claim 2, Widmer teaches a hearing instrument comprising a textured outer surface portion, wherein the portion is inserted in the ear of a user (figs. 4-24).

Regarding claim 3, Widmer teaches the hearing instrument texture is non-smooth (figs. 4-10).

Regarding claim 5, Widmer teaches the texture comprises a series of lines, unequally spaced (figs. 7-10).

Regarding claim 6, Widmer teaches the texture comprises a predetermined or randomly generated pattern (figs. 9-10, 13-14).

Regarding claims 8-9 and 11-12, see the rejections of claims 2-6 respectively.

Regarding claim 14, Widmer teaches a hearing instrument comprising a textured outer surface portion made by a process comprising laser (col. 3 line 60 through col. 4 line 34).

Regarding claim 15, Widmer teaches a hearing instrument comprising an outer surface fabricated as a series of layers, and a textured outer surface portion made by a process comprising applying a waveform (laser application, col. 3 line 60 through col. 4 line 34) to the edges of one or more of the layers during the fabrication process (claim 3).

Regarding claim 16, Widmer teaches a hearing instrument comprising an outer textured surface made by a process comprising: a mold cavity fabrication derived from surface contours of user's ear (col. 14 line 64 through col. 16 line 4); and modifying the mold cavity to create texture in the outer surface (col. 3 line 60 through col. 4 line 34).

Regarding claims 17-18, see the rejection of claims 2-6, 14, and 15.

Regarding claim 19, see the rejection of claims 2-6, and 16.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widmer (U.S. Patent No. 6,401,859).

Regarding claims 4 and 10, Widmer does not teach or restrict the finish applied to the hearing instrument. Furthermore, the examiner takes official notice that it is known for hearing instruments to be made with a variety of finishes, such as non-reflective, reflective, glow-in-the-dark, neon, glossy, etc. for aesthetic appeal to the hearing aid wearer. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the hearing aid with any of a variety of finishes for aesthetic desirability to the user.

Regarding claim 7, Widmer does not teach incorporating a faceplate onto the hearing instrument (figs. 4-23) comprising a textured outer surface; however, the examiner takes official notice that it is known to include a textured faceplate onto a hearing instrument for housing external components such as volume control, battery, etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a faceplate onto the hearing aid instrument for housing external components.

Response to Arguments

4. Applicant's arguments filed have been fully considered but they are not persuasive.

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5. With respect to the applicant's arguments that the Widmer reference does not disclose, teach or suggest a textured surface, the examiner disagrees with this statement. The applicant clearly defines a textured surface in his specification on page 5 (see the following excerpt).

Excerpt page 5, defining the words textured surface: "*A variety of textures may be utilized with hearing instrument shells. The texture may be a series of lines..., equally or unequally spaced..., or a plurality of shapes (e.g. ovals and circles...), or some other pattern, predetermined or randomly generated.*"

The applicant's specification requires a surface having a series of lines/shapes. The Widmer reference clearly supports this limitation as well as many of the other requirements as outlined in figures 4-24, column 6 lines 13-22, and the multiple channel configurations outlined and taught in the patent.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9314, for formal communications intended for entry and for informal or draft communications, please label "Proposed" or "Draft" when submitting an informal amendment.

(703) 306-0377, for customer service questions.

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

PLD


December 26, 2003


HUYEN LE
PRIMARY EXAMINER